



U.S. Department of Justice

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April 18, 2012

Honorable Douglas P. Woodlock
United States District Court
District of Massachusetts
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210

Re: Supplemental Authority in *United States v. Jose Baez*,
Criminal No. 10-CR-10275-DPW

Dear Judge Woodlock:

In *United States v. Leon*, 2012 WL 1081962 (D. Hawaii March 28, 2012), the Court (Seabright, J.) considered and rejected a motion to suppress evidence obtained as a consequence of the warrantless tracking of a GPS device affixed to the defendant's automobile, citing DEA agents' good faith reliance on Fourth Amendment jurisprudence prior to *United States v. Jones*, 131 S. Ct. 3064 (2011). While there was binding circuit court precedent permitting the attachment of the GPS device to an automobile without a warrant, the Ninth Circuit had not yet ruled on whether monitoring the vehicle's movements with a GPS device was a search within the scope of the Fourth Amendment.

In pertinent part, the court declared that:

Given the state of the law in 2009 [when the tracking occurred], the evidence clearly establishes that the DEA agents did not "exhibit deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights." Instead, they acted with an objectively reasonable good-faith belief that their conduct was fully compliant with then-existing Fourth Amendment jurisprudence. . . . Although the technology changed, the agents were certainly justified in relying on *Knotts*'

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rationale in determining that no warrant was required. And the sole circuit court to consider the use of a GPS device prior to 2009 found no Fourth Amendment violation, even considering the change in technology.

Leon, 2012 WL 1081962, at *5.

This reasoning applies even more forcefully in the *Baez* case.

Respectfully submitted,

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By: /s/ Stephen P. Heymann
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cc: Murat Erkan
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